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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/710,690

11/10/2000

Chris Carmichael

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Law Office of Scott C Harris Inc
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EXAMINER

GLASS, RUSSELL S

ART UNIT

PAPER NUMBER

3687

NOTIFICATION DATE

DELIVERY MODE

03/31/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 09/710,690	Applicant(s) CARMICHAEL ET AL.	
	Examiner RUSSELL SHAY GLASS	Art Unit 3687	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/29/2010 has been entered.

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. **Claims 21-23 and 25-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Rothman et al. (2002/0072984).**

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. As per claims 21 and 34, Rothman et al. teaches a method, comprising:
using a server computer which is programmed to receive an order over the Internet, via a web- based interface, said order received from a consumer, said order

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specifying at least one product to be purchased (see Rothman, abstract)(disclosing purchasing products over the Internet);

said programming on said server causing said receiving payment information from said consumer over the Internet (see Rothman, ¶ 39)(disclosing a third party payment server);

based on said receiving said order and said payment, using said programming on said computer for determining one of a plurality of different order fulfillment locations to send said at least one product to said consumer, (see Rothman, abstract)(disclosing that based on information supplied by the buyer a local retailer is selected to ship the purchased product);

said programming on said computer sending contents from said order, from said one of said order fulfillment locations based on said determining, to the consumer, using a shipping method (see Rothman, abstract)(disclosing that based on information supplied by the buyer, selecting a local retailer to ship the purchased product);

subsequent to said sending, using said programming on said computer for receiving information indicative of the consumer having returned to return the contents from said order to a local retailer, where said local retailer is different than said server and different from said one of said order fulfillment locations, (see Rothman, ¶ 47), and

responsive to said consumer returning said contents, using said programming on said computer for refunding the payment received as part of said payment information, (see Rothman, ¶ 47)(disclosing returning a product ordered online to a local retailer and receiving a refund for the return);

maintaining an inventory management system in a computer using programming that determines for said plurality of fulfillment locations, amounts of inventory maintained at least at a plurality of said fulfillment locations, (see Rothman, ¶ 46); and

storing, in said inventory management system, information indicative of inventory at local retailers, and also storing information indicative of other local retailers, and using said information to select one of said retailers to send said products, and using said refund of said item to increase an indication of a number of items stored at said retailer in said inventory management system, (see Rothman, ¶ 47)(disclosing that a local distributor may retain a refunded product for resale, i.e., add it to the inventory on hand; or that the local distributor can return the refunded product to the seller and be compensated by seller for the refund provided to the customer), where said programming maintains information which, for plural different items in said inventory management system, indicates whether said items are from returns, (see Rothman, ¶ 66)(disclosing a number of product fields including transaction data and inscription data, said data providing information as to whether an item had been returned).

3. As per claim 23, Rothman et al. teaches wherein said determining comprises determining an order fulfillment location to send said product which is physically closest to said consumer, (see Rothman, ¶ 75)(disclosing order fulfillment by a local retailer based on address information).

4. As per claims 26 and 35, Rothman et al. teaches using a server computer which is programmed to receive an order over the Internet, via a web- based interface, said

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order received from a consumer, said order specifying at least one product to be purchased (see Rothman, abstract)(disclosing purchasing products over the Internet);

Using said programming on said computer for selecting one of a plurality of different locations where said customer can pick up said at least one product to said consumer, (see Rothman, abstract)(disclosing that based on information supplied by the buyer a local retailer is selected to ship the purchased product);

said programming on said computer for sending a unique identification code which is unique to said order to the consumer, and also sending information to said location indicative of said unique identifying number and of information indicating that the consumer will pick up said order, (see Rothman, ¶ 66)(disclosing a transaction identifier field including mode of delivery); and

using the programming on the computer for providing said unique identifying number to said retailer, (see Rothman, ¶ 66).

5. As per claims 27 and 36, Rothman et al. teaches sending information from said server which defines packaging the order in branded packaging at the order fulfillment location using said brand associated with said server, (see Rothman, fig. 13)(disclosing a "hearts on fire diamond" sold online and shipped from a local retailer).

6. As per claim 28, Rothman et al. teaches informing the order fulfillment location when the consumer returns a product, (see Rothman, ¶ 47)(The customer informs the fulfillment location of a return by presenting the return to the fulfillment location).

7. As per claim 29, Rothman et al. teaches analyzing information indicative of orders to determine product trends based on geographic territory on a local level

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associated with order fulfillment locations and providing data which reminds said retailers to stock certain products which are in demand in a certain area, (see Rothman, ¶ 45-46)(disclosing that sales are tracked for commission, compensation and inventory purposes for each distributor or employee of a distributor).

8. As per claim 30, Rothman et al. teaches analyzing information indicative of orders to determine product trends based on demographics on a local level associated with order fulfillment locations and providing data which reminds said retailers to stock certain products which are in demand in a certain area, (see Rothman, ¶ 45-46)(disclosing that sales are tracked for commission, compensation and inventory purposes for each distributor or employee of a distributor).

9. As per claim 31, Rothman et al. teaches a method, comprising:

receiving an order over the Internet at a server computer using programming on the server computer, via a web- based interface, said order received from a consumer, said order specifying at least one product to be purchased (see Rothman, Abstract)(disclosing purchasing products over the Internet);

based on said receiving said order and said payment, using programming on the server computer to allow determining one of a plurality of different order fulfillment locations where said user can pick up the product, (see Rothman, ¶75);

using the programming on the computer for creating a unique identification code which is unique to said order, (see Rothman, ¶ 66)(disclosing a transaction identifier field including mode of delivery); and

using the programming on the computer for providing said unique identifying number to both said user and to said order fulfillment location, and sending information to said order fulfillment location that the consumer will pick up said order, (see Rothman, ¶¶40, 66).

10. As per claim 32, Rothman et al. teaches subsequent to said sending, allowing the consumer to return the contents from said order to a local retailer different than said server and different from said one of said order fulfillment locations, and responsive to said consumer returning said contents, refunding the payment received as part of said payment information (see Rothman, ¶¶ 47)(disclosing returning a product ordered online to a local retailer and receiving a refund for the return).

11. As per claim 33, Rothman et al. teaches maintaining an inventory management system that determines for said plurality of fulfillment locations, amounts of inventory maintained at least at a plurality of said fulfillment locations (see Rothman, Abstract)(disclosing local retailers providing inventory information to the online commerce store), and using said refund of said item to increase an indication of a number of items stored at said retailer in said inventory management system, (see Rothman, ¶¶ 47)(disclosing that a local distributor may retain a refunded product for resale, i.e., add it to the inventory on hand; or that the local distributor can return the refunded product to the seller and be compensated by seller for the refund provided to the customer).

12. As per claim 37, Rothman discloses a system wherein said internet server analyzes information indicative of orders to determine product trends based on

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geographic territory, (see Rothman, ¶¶ 58, 59)(disclosing analysis of local distributor data), on a local level associated with order fulfillment locations and providing data which reminds said retailers to stock certain products which are in demand in a certain area, (see Rothman, ¶ 45-46)(disclosing that sales are tracked for commission, compensation and inventory purposes for each distributor or employee of a distributor).

13. As per claim 38, Rothman discloses a system wherein said internet server analyzes information indicative of orders to determine product trends based on demographics, (see Rothman, ¶ 60)(detailing the types of user identification data to be stored for analysis), on a local level associated with order fulfillment locations and providing data which reminds said retailers to stock certain products which are in demand in a certain area, (see Rothman, ¶ 45-46)(disclosing that sales are tracked for commission, compensation and inventory purposes for each distributor or employee of a distributor).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. **Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rothman et al. (2002/0072984) in view of Borders et al. (2007/0174144).**

16. As per claim 24, Rothman et al. discloses all elements of the claimed invention, but fails to explicitly disclose wherein said determining comprises determining an order fulfillment location to send said product which is within a specified mailing time to said consumer.

Borders et al. discloses online store product availability including: wherein said determining comprises determining an order fulfillment location, (see Rothman, ¶ 75)(disclosing order fulfillment by a local retailer based on address information), to send said product which is within a specified mailing time to said consumer (see Borders, ¶ 41)(disclosing customers scheduling a specific date and time for delivery of a product through the online store).

From this disclosure of Borders et al. it would have been obvious to one having ordinary skill in the art at the time that the invention was made to modify the online store system of Rothman et al. to include allowing the customer to schedule an delivery date and time in order to facilitate delivery of customer orders when a customer is home (see Borders, ¶ 41).

Response to Arguments

Applicant's arguments filed 8/3/2009 have been fully considered but they are not persuasive for the following reasons.

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1. In response to Applicant's argument that the Rothman reference fails to disclose returns, it is submitted that Rothman, ¶ 100 discloses that it is contemplated that a product purchased by the user may be returned to a local distributor. Rothman further indicates that specific information regarding the item and the transaction is kept for future use, (see Rothman, ¶ 66).

Conclusion

The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RUSSELL SHAY GLASS whose telephone number is (571)272-7285. The examiner can normally be reached on weekdays between 9 AM and 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MATTHEW GART can be reached on 571-272-3955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. SHAY GLASS/
Examiner, Art Unit 3687